Suhaili bin Ismail v Syarikat Sribima Sdn Bhd

A

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-02(NCVC)(W)-1781–10 OF 2014
ZAWAWI SALLEH, IDRUS HARUN AND ABDUL RAHMAN SEBLI JJCA
3 SEPTEMBER 2015

B

Civil Procedure — Pleadings — Amendment — Amendment of writ of summons and statement of claim after close of pleadings — Whether amendments necessary for purpose of determining all questions in controversy — Whether there was delay in filing application to amend — Whether High Court judge exercised his discretion wrongly in allowing amendments

C

D

The respondent had commenced an action against the appellant. After the close of pleadings, the respondent had applied to amend its writ of summons and statement of claim. The respondent had opposed the application on the grounds that the proposed amendments would cause injustice and prejudice to him. The appellant also argued that there was a delay on the part of the respondent in filing its application. The High Court judge accepted the respondent's explanation for the amendments and allowed the respondent's application for an amendment of the pleadings. This was the appellant's appeal against that decision. The appellant contended that the High Court judge had exercised his discretion wrongly in allowing the amendments.

E

F

Held, dismissing the appeal with no order as to costs:

(1) It is settled law that amendments to pleadings could be sought and granted at any stage of the proceedings. Although the respondent had applied to amend its pleadings after the close of pleadings, it was clear, based on the grounds of judgment, that the High Court judge was of the opinion that the proposed amendments were necessary to be placed before the court so that all questions in controversy could be finally determined and there was no reason to disagree with these findings (see paras 4–6).

G

H

(2) The High Court judge was also correct in finding that the proposed amendments were bona fide in that they arose as a result of the appellant's averments in his defence and counterclaim. Also relevant was the fact that the respondent's application was made expeditiously without delay within 14 days of the appellant filing his reply to defence to the counterclaim (see para 8).

I

(3) In the circumstances of the case, the High Court judge had not exercised his discretion wrongly in allowing the amendments. Further, no prejudice had been caused to the appellant and this was not a case where the appellant could not be compensated by an appropriate order of costs (see para 9).

[Bahasa Malaysia summary

Responden memulakan tindakan terhadap perayu. Selepas penutupan pliding, responden telah memohon untuk meminda writ saman dan pernyataan tuntutannya. Responden telah menentang permohonan tersebut atas alasan bahawa pindaan yang dicadangkan akan mengakibatkan ketidakadilan dan prejudis kepadanya. Perayu juga berhujah bahawa terdapat kelewatan oleh pihak responden dalam memfailkan permohonannya. Hakim Mahkamah Tinggi menerima penjelasan responden untuk pindaan-pindaan tersebut dan membenarkan permohonan responden untuk pindaan pliding tersebut. Ini adalah rayuan perayu terhadap keputusan tersebut. Perayu berhujah bahawa hakim Mahkamah Tinggi telah menjalankan budi bicaranya secara salah dalam membenarkan pindaan-pindaan tersebut.

Diputuskan, menolak rayuan tanpa perintah terhadap kos:

(1) Adalah undang-undang yang ditetapkan bahawa pindaan-pindaan kepada pliding boleh dipohon dan dibenarkan pada mana-mana peringkat prosiding. Walaupun responden telah memohon untuk meminda plidingnya selepas penutupan pliding, ia adalah jelas, berdasarkan atas alasan penghakiman, bahawa hakim Mahkamah Tinggi adalah berpendapat bahawa pindaan yang dicadangkan adalah perlu dikemukakan di hadapan mahkamah dengan itu kesemua soalan kontroversi boleh akhirnya ditentukan dan tiada sebab untuk tidak bersetuju dengan dapatan ini (lihat perenggan 4–6).

(2) Hakim Mahkamah Tinggi juga betul dalam dapatan bahawa pindaan-pindaan yang dicadangkan adalah suci hati di mana ia berbangkit akibat penegasan perayu dalam pembelaan dan tuntutan balasnya. Juga relevan adalah fakta bahawa permohonan responden dibuat secara cepat dan cekap tanpa kelewatan dalam masa 14 hari selepas perayu memfailkan jawapannya kepada pembelaan dan tuntutan balas (lihat perenggan 8).

(3) Dalam keadaan kes, hakim Mahkamah Tinggi tidak menjalankan budi bicaranya secara salah dalam membenarkan pindaan-pindaan tersebut. Selanjutnya, tiada prejudis telah diakibatkan kepada perayu dan ini bukan kes di mana perayu tidak boleh dipampaskan dengan perintah kos yang wajar (lihat perenggan 9).]]

Notes

For cases on amendment, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 6775–6903.

Cases referred to

Bumiputra-Commerce Bank Bhd & Ors v Bumi Warna Indah Sdn Bhd [2004] MLJU 529; [2004] 4 CLJ 825, HC (refd)
Hock Hua Bank Bhd v Leong Yew Chin [1987] 1 MLJ 230, SC (refd)
YB Datuk Dr Soon Choon Teck v YB Datuk Robert Lau Hoi Chew & Ors [2009] 3 MLJ 785, CA (refd)
Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213, FC (refd)

Legislation referred to

Rules of the Supreme Court O 28

Appeal from: Civil Suit No 22NCVC-4/3 of 2014 (High Court, Bintulu)

Henry Ling Kuong Meng (Ling & Wong) for the appellant.
Satinder Singh Sandhu (Sandhu & Co) for the respondent.

Abdul Rahman Sebli JCA:

[1] This was an appeal by the appellant against the High Court's decision allowing the respondent's application for amendment of the writ of summons and statement of claim both dated 27 March 2014. Having heard arguments on 9 February 2015, we dismissed the appeal with no order as to costs. These are our grounds in brief.

[2] The principle in an application of this nature is well settled. In the oft-cited case of *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors* [1983] 1 MLJ 213 the Federal Court laid down the following general principle at pp 214–215:

> Under O 20 of the Rules of the High Court 1980, which is equivalent to O 28 of the Rules of the Supreme Court, a judge has a discretion to allow leave to amend pleadings. Like any other discretion, it must of course be exercised judicially (see *Kam Hoy Trading v Kam Fatt Tin Mine* [1963] 1 MLJ 248). The general principle is that the court will allow such amendments as will cause no injustice to the other parties. Three basic questions should be considered to determine whether injustice would or would not result, (1) whether the application is bona fide; (2) whether the prejudice caused to the other side can be compensated by costs and (3) whether the amendments would not in effect turn the suit from one character into a suit of another and inconsistent character.

[3] In *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230, the then Supreme Court in granting the application for amendments to the pleadings held at p 232:

> As for the general principles for the granting of leave to amend: It is a guiding principle of cardinal importance on the question of amendment that, generally speaking, all such amendments ought to be made 'for the purpose of determining the real controversy between the parties to any proceedings or of correcting any defect or error in any proceedings' (see per Jenkins LJ in *GL Bakar Ltd v Medway Building & Supplies Ltd* [1958] 1 WLR 1216 at p 1231; [1958] 3 All ER 540 at p 546).
>
> It is a well established principle that the object of the court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exists for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace.

[4] Amendments to pleadings may be sought and granted at any stage of the proceedings: see *Bumiputra-Commerce Bank Bhd & Ors v Bumi Warna Indah Sdn Bhd* [2004] MLJU 529; [2004] 4 CLJ 825 where Abdul Malik Ishak J (as he then was) said:

> Indeed reported authorities are abound in the law journals which categorically show that amendments to pleadings are allowed before trial, during trial, before judgment, after judgment and even when there is a pending appeal against a judgment in a situation where the said judgment has been granted premised on the original un-amended pleadings.

[5] In the case before us, it is undisputed that at the time the application for amendments was made by the respondent, the pleadings had only recently closed and no trial date had been fixed by the court. The appellant in opposing the application contended that the proposed amendments would cause injustice and prejudice to him as the allegations in the proposed amendments related to matters that happened 6–8 years preceding the application for amendment. It was further argued that there was a delay on the part of the respondent in alleging the new tort of conspiracy or acting in concert and was therefore an afterthought.

[6] From the grounds of judgment, it is clear that the learned judge accepted the respondent's explanation that the allegation of conspiracy arose from the same facts or were substantially the same as those already pleaded by them and that the proposed amendments were necessary to be placed before the court so that all questions in controversy can be finally determined by the court. We have no reason to disagree with the learned judge.

[7] The learned judge cited the decision of the Court of Appeal in *YB Datuk Dr Soon Choon Teck v YB Datuk Robert Lau Hoi Chew & Ors* [2009] 3 MLJ 785 where the court made the following observations:

> Even if the proposed amendment gives rise to a new cause of action, but it does not turn the suit from one character into another. It is to be observed that the proposed amendment is inserted in relation to the publication referred to in paras 7 and 8 of the statement of claim. Upon close perusal of the said paragraphs, it is clear to us that the appellant had in fact pleaded therein that the impugned statements or words were understood to infer and refer to him. In our view, even though the proposed amendment appears to be massive but in reality it merely seeks to supplement what has been earlier pleaded in the said paragraphs to show that the words complained of referred to the appellant.

[8] It was also the learned judge's finding that the proposed amendments were bona fide in that they arose as a result of the appellant's averments in his defence and counterclaim. Also relevant is the fact that the respondent's application was made expeditiously without delay on 4 July 2014, which was 14 days after the appellant filed his reply to defence to the counterclaim on 30 June 2014.

[9] Having regard to all the circumstances of the case, we were of the view that the learned judge did not exercise his discretion wrongly in allowing the amendments. Further, no prejudice had been caused to the appellant and in any event this is certainly not a case where the appellant could not be compensated by an appropriate order of costs. It was for these reasons that we dismissed the appeal.

Appeal dismissed with no order as to costs.

Reported by Kohila Nesan